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**FEB 14 2014**

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Hammond Ranches, Inc.  
Dwight, Steven, and Susan Hammond



### **NOTICE OF FINAL DECISION**

To

Deny Application for Grazing Permit Renewal

### **INTRODUCTION**

This Final Decision affects grazing for Mud Creek, Hammond, Hardie Summer, and Hammond Fenced Federal Range (FFR) Allotments within the Burns District of the Bureau of Land Management (BLM). Hammond Ranches, Inc. submitted an Application for Grazing Permit Renewal signed on September 30, 2013 by Susan Hammond. The request is for grazing identical to the previous grazing authorization number 3602564.

### **BACKGROUND**

Hammond Ranches, Inc. has grazed livestock within Mud Creek and Hardie Summer Allotments within Burns District since 1964. The original privilege was for 971 Animal Unit Months (AUM). In 1965 the AUMs were adjusted to 972 to include FFR. Eleven AUMs were added in 1968 and remained unchanged until 1978 when Hammond Ranches, Inc. obtained the privileges for 762 AUMs in Krumbo Allotment. Also in 1978, 1,210 AUMs in Frazier Field Allotment were added. In 1987 Frazier Field Allotment AUMs were transferred to Rex Clemens Ranches. The AUMs in the remaining allotments fluctuated over the years based upon on-the-ground conditions and exchange of use between allotments. The current permit authorization (3602564) is for the term of March 1, 2004 to February 28, 2014, and authorizes the following:

Allotment Number and Name	Livestock Number/Kind	Grazing Begin	Period Ends	Percent Public Lands	Active AUMs
06005 Mud Creek	390 cattle	05/16	06/30	100	590
06023 Hammond	68 cattle	04/01	10/30	99	471
06025 Hardie Summer	408 cattle	07/01	09/30	33	407
06100 Hammond FFR	32 cattle	04/01	04/30	100	32

### FINAL DECISION

It is my Final Decision to deny the Application for Grazing Permit Renewal in its entirety and not issue a new grazing permit because Hammond Ranches, Inc. does not have a satisfactory record of performance as described in detail below. For the same reasons, the grazing preference associated with this permit will no longer be effective and Hammond Ranches, Inc. will no longer hold a superior or priority position against others for the purpose of receiving a grazing permit for these allotments. Because Hammond Ranches, Inc. has not met the requirements for renewal of permitted use, Hammond Ranches, Inc. can no longer stand in first priority to receive permitted use.

### RATIONALE

Hammond Ranches, Inc. is controlled by its president, Dwight Hammond, and vice-president, Steven Hammond, who is Dwight's son. The United States prosecuted Dwight and Steven Hammond for intentionally setting several fires over multiple years on public lands. *United States v. Dwight Hammond and Dwight (Steven) Hammond, Jr.* 10-CR-60066-HO (D.Or.). Through a May 16, 2012 superseding indictment, Dwight and Steven Hammond (collectively "the Hammonds") were indicted on criminal charges related to arson on public lands. On June 21, 2012, a federal jury returned a verdict finding Dwight Hammond guilty of one count of violating 18 U.S.C. § 844(f)(1) for his role in starting the 2001 Hardie-Hammond Fire. The jury also returned a guilty verdict for two counts under § 844(f)(1) against Steven Hammond for his role in starting the 2001 Hardie-Hammond Fire and the 2006 Krumbo Butte Fire. Dwight was convicted of Count 2 of the indictment and Steven was convicted of Counts 2 and 5. 18 U.S.C. § 844(f)(1) imposes criminal penalties on a party who "maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property" owned by the United States. The Hammonds were acquitted on some other counts in the indictment, and the jury had not yet reached a verdict on still other counts when the defense and the government reached an agreement to resolve the remainder of the criminal case. The specifics are detailed in Attachment 1, entitled Summary of Counts. On October 30, 2012, United States District Judge Michael Hogan sentenced Dwight Hammond and Steven Hammond to prison sentences pursuant to § 844(f)(1).

Hammond Ranches, Inc.'s grazing authorization permit (3602564) will expire on February 28, 2014. To obtain renewal of the permit, Hammond Ranches, Inc. must be determined by the BLM authorized officer to have a satisfactory record of performance. BLM grazing regulations at 43 C.F.R. § 4110.1(b) (2005)<sup>1</sup> provide:

Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) Renewal of permit or lease. (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

The Interior Board of Land Appeals has explained that:

“[S]ubstantial compliance” is to be determined by considering both “the number of prior incidents of noncompliance,” and “the nature and seriousness of any noncompliances,” recognizing that the ultimate aim of a BLM decision regarding renewal is to use the record of performance “to confirm the ability” of a permittee “to be a [good] steward of the public land,” and thus “to ensure that permittees ... are good stewards of the land,” thereby “protect[ing] [the land] from destruction or unnecessary injury and provid[ing] for orderly use, improvement, and development of resources.” 60 Fed. Reg. 9925; see 59 Fed. Reg. 14314, 14330 (Mar. 25, 1994). Further, any act of “noncompliance with the requirements of 43 CFR Part 4100,” whether unauthorized grazing use or some other noncompliance, is relevant to a performance review under 43 C.F.R. § 4110.1 (b). 60 Fed. Reg. at 9925.

*Hanley Ranch Partnership*, 183 Interior Board of Land Appeals 184, 199 (2013); see also 60 Fed. Reg. 9894, 9925-27 (Feb. 22, 1995). The requirement to be in compliance with the terms and conditions of the permit and pertinent rules and regulations is based in the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1752, and Taylor Grazing Act, 43 U.S.C. §§ 315a-315b. The BLM has noted the importance of ensuring permit renewals are consistent with FLPMA and Taylor Grazing Act requirements “that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources.” 60 Fed. Reg. 9926; see also Taylor Grazing Act, 43 U.S.C. § 315a (providing for Secretary of the Interior to “preserve the land and its resources from destruction or unnecessary injury” and “to provide for the orderly use, improvement, and development of the range.”) The Taylor Grazing Act, 43 U.S.C. § 315b, conditions renewal of a grazing permit on compliance with rules and regulations. FLPMA, 43 U.S.C. § 1752(c), provides that, for a permittee holding an expiring grazing permit to be given first priority for

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<sup>1</sup> The Ninth Circuit Court of Appeals affirmed a permanent injunction setting aside regulatory action by BLM in 2006 to amend BLM's 1995 grazing regulations. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 427, 486-500 (9<sup>th</sup> Cir. 2011). References herein are to the currently applicable regulations: the 1995 regulations as codified in the 2005 Code of Federal Regulations.

receipt of a new permit, the permittee must be “in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit.”

Dwight and Steven Hammond own, operate, and serve as officers of Hammond Ranches, Inc. Dwight and Steven are “affiliates” of Hammond Ranches, Inc. as owners, operators, and/or officers. Under the BLM grazing regulations at 43 C.F.R. § 4100.0-5:

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term “control” means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

BLM regulations at 43 C.F.R. § 4110.1(c) further provide:

In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

Dwight and Steven Hammond control Hammond Ranches, Inc. and have authority to determine the manner in which Hammond Ranches, Inc. conducts grazing operations. The expiring grazing permit (3602564) is issued in the name of “Hammond Ranches, Inc c/o Dwight Hammond.” Dwight is the President of Hammond Ranches, Inc. The expiring permit was signed by Steven Hammond. Steven is the Vice President. Steven signed the 2003 application for renewal of the present permit. Steven has signed grazing actual use reports during the permit term. Hammond Ranches, Inc. submitted an Application for Grazing Permit Renewal signed on September 30, 2013 by Susan Hammond. Susan is Dwight’s spouse and Steven’s mother. She has served as Secretary of Hammond Ranches, Inc.

Regulations applicable to the grazing permit prohibit “(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization” and “(4) Damaging or removing U.S. property without authorization.” 43 C.F.R. § 4140.1. In light of the criminal convictions under 18 U.S.C. § 844(f)(1) and the Hammonds’ actions described in the evidence presented at the criminal proceedings, the BLM finds that the grazing permit cannot be renewed due to an unsatisfactory record of performance. Dwight and Steven have each been convicted as a party who “maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property” owned by the United States. The Hammonds’ conduct of intentionally setting fires on public lands under 18 U.S.C. § 844(f)(1) violates the regulations applicable to Hammond Ranches, Inc.’s grazing permit. 43 C.F.R. § 4140.1. Paragraph Two of Hammond Ranches, Inc.’s grazing authorization (3602564) “Standard Terms and Conditions” requires compliance with rules and regulations. Additionally, BLM regulations applicable to all parties, including grazing permit holders, at 43 C.F.R. § 9212.1, provide:

Unless permitted in writing by the authorized officer, it is prohibited on the public lands to:

- (a) Cause a fire, other than a campfire, or the industrial flaring of gas, to be ignited by any source;

...

(c) Burn, timber, trees, slash, brush, tundra or grass except as used in campfires;

(d) Leave a fire without extinguishing it, except to report it if it has spread beyond control;

...

(f) Resist or interfere with the efforts of firefighter(s) to extinguish a fire.

The following narrative summarizes witness testimony and evidence presented at the Hammonds' criminal trial that took place at the United States District Court in Pendleton, Oregon from June 12 through 21, 2012 (Case 6:10-cr-60066-HO). This narrative describes the actions of Dwight and Steven and demonstrates how the Hammonds violated BLM grazing regulations and the terms of Hammond Ranches, Inc.'s grazing permit, endangered the lives of numerous individuals including firefighters, and altered ecological conditions on public lands.

#### **A. Dwight and Steven's Conviction for the 2001 Hardie-Hammond Arson**

Dwight and Steven were both convicted of Count 2 of the criminal indictment (2001 Hardie-Hammond Arson). Dwight and Steven intentionally lit fires on public lands damaging property owned and possessed by the United States. The BLM grazing regulations and the terms and conditions of the grazing permit issued to Hammond Ranches, Inc., expressly prohibit this action. The following narrative describes events leading to this conviction, based on testimony and evidence at the criminal trial.

On September 30, 2001, the first day of deer hunting season, 13-year old Dusty Hammond was at the Hammond's Ranch with plans to hunt.<sup>2</sup> Dusty is grandson to Dwight and nephew to Steven.<sup>3</sup> Early that morning, Dusty sat at the Hammonds' breakfast table and overheard Dwight talking about his desire to burn juniper.<sup>4</sup> After breakfast, the Hammonds' hunting party, which included family and friends, set out with rifles in search of game. After some driving and walking, several shots were fired by someone in the Hammonds' hunting party into a group of deer.<sup>5</sup>

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<sup>2</sup> Transcript of Case 6:10-CR-60066-HO in the U.S. District Court for the District of Oregon, Pages 255, 258 (hereafter "Tr.").

<sup>3</sup> Tr. at 251.

<sup>4</sup> Tr. at 261, Lines 16-20.

<sup>5</sup> Tr. at 143-44 (testimony of Gordon Choate); 269, Lines 23-25; 270, Lines 1-3 (testimony of Dusty Hammond).

Gordon Choate, a commercial hunting guide, witnessed this shooting while escorting two clients from Utah, Dennis and Dustin Nelson. While several deer appeared to be wounded (Choate reported four bucks being crippled), the Hammond hunting party did not track or collect any deer.<sup>6</sup> This concerned Mr. Choate's clients. Mr. Choate was also uncomfortable and decided to move his clients quickly away from the scene and back to a temporary hunting camp he had set up days before.<sup>7</sup>

After shooting at the deer, the Hammonds' hunting party continued to walk and drive across the landscape scouting for game. The party broke up into smaller groups and then reconvened before instructions were given to commit arson. Steven, with Dwight at his side, started handing out boxes of matches to everyone in the party including Dusty and said that the group was "going to light up the whole country on fire."<sup>8</sup> With matches in hand, the hunting party separated into small groups and walked in various directions. Steven pointed out a path that Dusty was to follow while dropping lit matches.<sup>9</sup> At first, Dusty was having trouble getting a single match to carry a flame through the grass. Russell Hammond, Dusty's father, assisted Dusty by showing him how to light multiple matches at the same time to better catch the grass on fire.<sup>10</sup>

During this time Mr. Choate was driving back to his hunting camp with his clients. Shortly after arriving Mr. Choate had to quickly move again because the thick smoke produced by the fires lit by the Hammond hunting party was blowing directly at his camp.<sup>11</sup> Mr. Choate was concerned for the safety of his clients and himself because the fire appeared to be moving towards them. Mr. Choate did not even break down his hunting camp before fleeing with his clients because he thought that the fire was on its way to burn them over.<sup>12</sup> The Nelsons could see the flames of the fire approaching their camp from the location where they were hunting with Mr. Choate just a short time before.<sup>13</sup> Mr. Choate drove his clients away from the fire, back to their truck, and out of harm's way.

Later that day Dwight and Steven took to the sky in their airplane to examine the burnt area. They told Dusty that they were going to check to see if the fire got rid of the juniper.<sup>14</sup>

Shortly after this fire, Dwight spoke with David Ward, Range Management Specialist for BLM Burns District. Dwight told Mr. Ward that, for years, he had wanted to burn the

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<sup>6</sup> *Tr.* at 143-45 (testimony of Mr. Choate).

<sup>7</sup> *Tr.* at 144-47.

<sup>8</sup> *Tr.* at 274-277 (testimony of Dusty Hammond).

<sup>9</sup> *Tr.* at 276-77.

<sup>10</sup> *Tr.* at 277, Lines 6-15.

<sup>11</sup> *Tr.* at 149-50.

<sup>12</sup> *Tr.* at 180.

<sup>13</sup> *Tr.* at 231-32 (testimony of Dennis Nelson); 246 (testimony of Dustin Nelson).

<sup>14</sup> *Tr.* at 285, Lines 12-17.

area where the 2001 fire had burned and that while BLM had promised him that it would be burned with a prescribed fire, it had not.<sup>15</sup>

Instead of coordinating with BLM, the Hammonds took matters into their own hands. The Hammonds wanted fewer junipers on public allotments they were permitted to graze because fewer junipers meant more grass for their cows to eat. The 2001 fire may have added livestock forage on public lands the Hammonds grazed for profit, but it also endangered people in the area and violated BLM grazing permit regulations. As a child, Dusty was intimidated by his grandfather and uncle to not speak about the incident. Dwight and Steven told Dusty to keep his mouth shut about the fire, and Dusty did for many years.<sup>16</sup> However, Dusty's testimony at the criminal trial explained Dwight and Steven's roles and they were convicted of arson in 2012 for this 2001 fire. The BLM consequently became aware during the current grazing permit period that Dwight and Steven committed this arson.

## **B. Series of Fires in August 2006**

Of the counts related to a series of events in 2006, Steven was convicted of Count 5. A narrative summary of the trial testimony concerning the 2006 series of fires follows.

In August of 2006, Karla Bird was the BLM Field Manager for the Andrews/Steens Resource Area which includes the public land grazing allotments utilized by the Hammonds. On August 4, Ms. Bird spoke with Steven on the phone regarding road access. Steven asked when BLM planned to burn the grazing allotments his livestock used, and Ms. Bird replied that she did not know because the burn plan had not been completed. Steven responded that BLM burning would not occur soon enough.<sup>17</sup>

On August 8, Chris Briels, then Fire Chief for Harney County, issued a county-wide ban on open burning that stayed effective for the entire month of August 2006.<sup>18</sup> This ban prohibited private citizens from burning on their land without a waiver from the Fire Chief. The Hammonds never attempted to obtain a waiver from the County to burn any of their private land.<sup>19</sup>

On August 17, Joe Glascock, BLM Range Management Specialist, was working with Steven to flag a new cattle fence. Mr. Glascock was assigned to manage the allotments covered by the Hammond grazing permit. While working together, Steven admitted to Mr. Glascock that he and Dwight had been setting fires in the area for years, and that one fire they set was even attributed to a jet flying over the area.<sup>20</sup> Steven also told Mr. Glascock to not be surprised if more fires appeared after the next lightning storm in the

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<sup>15</sup> *Tr.* at 367, Lines 4-7.

<sup>16</sup> *Tr.* at 282-85; 293.

<sup>17</sup> *Tr.* at 426, Lines 19-23.

<sup>18</sup> *Tr.* at 664, Lines 18-20; 665, Lines, 16-18.

<sup>19</sup> *Tr.* at 666, Lines 15-25; 667, Line 1.

<sup>20</sup> *Tr.* at 1034, Lines 12-25.




area.<sup>21</sup> Mr. Glascock reported these statements to George Orr, BLM Law Enforcement Officer, on August 20 or 21.<sup>22</sup>

On August 21, 2006, a lightning storm hit the Steens Mountain area and ignited several fires, including the Krumbo Butte Fire.<sup>23</sup> Wildland firefighters were immediately dispatched to suppress these fires. The next day, Ms. Bird had a phone conversation with Steven. Steven asked Ms. Bird if she was aware of a fire on Moon Hill, to which Ms. Bird replied that she was not. Steven then stated that “you will soon.”<sup>24</sup> That same day, Mr. Glascock encountered Dwight in the field while assisting with suppression operations. Dwight told Mr. Glascock that he wished the fires were larger in size.<sup>25</sup>

#### 1) Night of August 22, 2006

On the night of August 22, Brett Dunten, a contract firefighter, was assisting with suppression of the Krumbo Butte Fire. The BLM firefighters in the area reported inactive fire behavior and mild weather conditions.<sup>26</sup> Around 10:00 p.m., Mr. Dunten observed three spot fires ahead of the main fire that appeared suspicious because of their linear formation and proximity to the main fire.<sup>27</sup> The spots burned together to form an acre of fire that was far in front of the main fire on a night of calm winds.<sup>28</sup> Due to the suspicious circumstances surrounding these spots, the firefighters were concerned that someone was committing arson.<sup>29</sup> The spot fires were located downhill from where Mr. Dunten’s crew were spending the night. Since fire can move very rapidly uphill, and having fire below sleeping personnel is extremely dangerous, Mr. Dunten moved his crew to a different location to sleep for the night.<sup>30</sup>



Steven was convicted of lighting these three spot fires on the evening of August 22 near Krumbo Butte downhill from where firefighters were working (Count 5). This reckless act that violated the County ban on burning endangered the lives of those firefighters.<sup>31</sup>

Standardized wildland firefighting operating procedures recognize fire burning in an area downhill from personnel is dangerous. The National Wildfire Coordinating Group has developed a list of eighteen watch-out situations designed to keep firefighters safe while working.<sup>32</sup> Firefighters are trained to

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<sup>21</sup> Tr. at 1035, Lines 1-9.

<sup>22</sup> Tr. at 1039, Lines 2-6.

<sup>23</sup> Tr. at 1651, Lines 12-21 (testimony of Ronald Holle, lightning expert).

<sup>24</sup> Tr. at 427, Lines 9-15.

<sup>25</sup> Tr. at 1046, Lines 2-8.

<sup>26</sup> Tr. at 674; 678-79; 698, Lines 6-12 (testimony of Jeffrey Hussey).

<sup>27</sup> Tr. at 675; 679.

<sup>28</sup> Tr. at 701 (testimony of Mr. Hussey).

<sup>29</sup> Tr. at 703, Lines 7-9 (testimony of Mr. Hussey).

<sup>30</sup> Tr. at 680, Lines 24-25; 681, Line 1; 686, Line 25; 687, Lines 1-9.

<sup>31</sup> Tr. at 532, Lines 10-25 (testimony of David Toney); 863, Lines 14-24 (testimony of Lance Okeson).

<sup>32</sup> See 18 Watchout Situations (available at: [http://www.fs.fed.us/fire/safety/10\\_18/10\\_18.html](http://www.fs.fed.us/fire/safety/10_18/10_18.html)).



exercise extreme caution when they find themselves in one of the watch-out situations. Number 9 on this list is “building fireline downhill with fire below.” Number 13 on the list is “on a hillside where rolling material can ignite fuel below.” Both of these scenarios are included as watch-out situations because fire burns very rapidly uphill and can endanger firefighters working uphill from a fire. Fire burns more rapidly uphill than it would on a flat surface or downhill because heat and flames naturally rise. Flames assume the same angle of incline as the earth beneath them. This allows the flames to preheat fuels in front of the fire by extracting moisture before the flame actually makes contact with the fuels, priming those fuels in front of the fire to ignite quicker and burn more intensely.

Common denominators of fire behavior on fatality fires include working in relatively light fuels such as grass, herbs, and light brush and fires running uphill.<sup>33</sup> These common denominators were present on the Krumbo Butte fire. The fuel type indicative of this area is grasslands intermixed with sage and juniper. When Steven lit the three fires on the night of August 22, he endangered the lives of firefighters and violated BLM regulations. Any burning, destroying, or removing of BLM property without prior authorization constitutes a violation of grazing regulations. 43 C.F.R. § 4140.1. Further, Steven put firefighters at risk and caused them to alter their plans and vacate a camp. Accordingly, he interfered with the efforts of firefighters to extinguish a fire in violation of 43 C.F.R. § 9212.1.

## **2) August 23, 2006**

On the morning of August 23, Mr. Dunten, still unaware that Steven had lit the fires the night before, reported the suspicious spot fires to BLM firefighter Lance Okeson. Mr. Dunten expressed his suspicion that someone was lighting fires below his crew.<sup>34</sup> Mr. Dunten and Mr. Okeson discussed this as a possibility and formulated a plan for the day that allowed suppression operations to continue while ensuring crewmember safety.

To achieve their objectives, Mr. Okeson and Mr. Glascock lit a black line fire on the west side of a road on the morning of August 23.<sup>35</sup> The intent of this black line was to deprive the advancing flame front of fuel and widen the defensible space afforded to firefighters by the existing road. Black lining off of a road is a common suppression tactic utilized by wildland firefighters. The west side of the road was burned by this black line, but the east side was not burned except for a small slop over. (Slop over is when the fire pushes through a containment line. This can be the result of short-distance spotting, or the effects of radiant or convective heating being great enough to preheat and ignite fuels on the opposite side of the fire line.)


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<sup>33</sup> See Carl Wilson’s Common Denominators of Fire Behavior on Tragedy Fires (available at: [http://www.nwcg.gov/pms/pubs/pms841/pms841\\_pages23-26.pdf](http://www.nwcg.gov/pms/pubs/pms841/pms841_pages23-26.pdf)).


<sup>34</sup> Tr. at 848, Lines 5-10 (testimony of Mr. Okeson).

<sup>35</sup> Tr. at 862, Lines 7-11.

Sometime around 9-10 a.m. on August 23, BLM firefighters Chad Rott and Lisa Megargee were called to the area of the black line operation. Mr. Rott was asked to clear a juniper tree that had fallen across the road that Mr. Glascock and Mr. Okeson were utilizing for their black line. Steven Hammond and a passenger arrived on scene in a blue Chevy pickup truck. Steven was trying to drive down the road to where Mr. Okeson and Mr. Glascock were located, but Mr. Rott's fire engine was blocking the road while he worked to remove the juniper tree from the road. Steven leaned out his window to ask Mr. Rott how long he was going to be blocking the road. Mr. Rott responded that he would be there as long as it took to move the fallen tree. Steven proceeded to back up his truck and drive it off the road and up an embankment at a high rate of speed to pass Mr. Rott's engine and the downed tree.<sup>36</sup> After passing Mr. Rott, Steven was driving on the road between the location of Mr. Rott and Mr. Okeson.



Soon after this encounter, and approximately a quarter mile down the road from where Mr. Rott had cleared the fallen juniper tree (and along the path just traveled by Steven), a half-acre fire erupted on the east side of the road. This fire was located just off the road between the two groups of BLM firefighters. According to Mr. Rott, this fire was very active, exhibited 4-foot flame lengths, and expanded in size very rapidly.<sup>37</sup> Mr. Rott did not see a connection between this highly active fire behavior on the east side of the road and the fire on the west side of the road, because the fire on the west side appeared out.<sup>38</sup> Ms. Megargee agreed that the black line and the slop over were out cold.<sup>39</sup> Both Mr. Rott and Ms. Megargee reported that no one else was in this area aside from firefighters, Steven, and his unidentified truck passenger.<sup>40</sup> The active fire that ignited between the two groups of firefighters on the east side of the road was observed after Steven passed Mr. Rott, but before Steven reached Mr. Okeson.<sup>41</sup>



As Steven approached Mr. Okeson and Mr. Glascock, he stopped to chat with Mr. Glascock.<sup>42</sup> At this point, Steven was driving the truck alone without a passenger. Mr. Okeson asked Steven if he had any information about the suspicious spot fires near Krumbo Butte that had occurred the night before. Steven replied that he had lit those fires to provide feed for his cattle.<sup>43</sup> The BLM firefighters informed Steven that lighting unannounced fires below active suppression operations was very dangerous.<sup>44</sup> Steven responded that the firefighters "had just better clear

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<sup>36</sup> *Tr.* at 721-23 (testimony of Mr. Rott).

<sup>37</sup> *Tr.* at 724-27.

<sup>38</sup> *Tr.* at 726, Lines 1-7; 733 Lines 6-7.

<sup>39</sup> *Tr.* at 770, Lines 15-23; 773, Lines 9-17.

<sup>40</sup> *Tr.* at 726, Lines 18-21; 733 Lines 3-5 (testimony of Mr. Rott); 775, Lines 22-25; 776, Lines 1-2 (testimony of Ms. Megargee).

<sup>41</sup> *Tr.* at 749 Lines 18-22 (testimony of Mr. Rott); 783, Lines 4-6 (testimony of Ms. Megargee).

<sup>42</sup> *Tr.* at 862.

<sup>43</sup> *Tr.* at 862-63 (testimony of Mr. Okeson); 1080 (Glascock).

<sup>44</sup> *Tr.* at 863. BLM encourages private landowners to coordinate with the agency to conduct prescribed burning. BLM policy dictates that prescribed burning should occur at a time when conditions are favorable to achieving the objectives and when sufficient resources are available to perform operations safely. According to Mr. Okeson,

out.”<sup>45</sup> Shortly after Steven left the location of Mr. Okeson and Mr. Glascock, another suspicious fire was spotted on the east side of the road, very close to where Steven had just traveled.<sup>46</sup>

Mr. Okeson drove toward the new ignition on the east side of the road on his all-terrain vehicle (ATV) in an attempt to determine its cause.<sup>47</sup> While considering his options and examining a map, Mr. Okeson noticed an individual fleeing from what appeared to be a recently lit fire.<sup>48</sup> The individual unknowingly walked close enough to Mr. Okeson, who identified him as Dwight.<sup>49</sup> When Mr. Okeson made eye contact with Dwight and yelled at him by name to stop, Dwight fled on foot into the brush.<sup>50</sup> Mr. Okeson pursued Dwight on foot as he called Mr. Glascock on his radio to provide assistance.<sup>51</sup> Dwight attempted to elude Mr. Okeson by quickly walking between bushes,<sup>52</sup> but eventually Dwight stopped.<sup>53</sup> Mr. Okeson stood facing Dwight and verbally confronted him about lighting unauthorized fires. Mr. Okeson told Dwight that he knew Dwight had lit a fire and that his fires were going to box in firefighters and put people in danger.<sup>54</sup> Mr. Okeson explained that “we have people all over this mountain” and “you’re going to get someone killed.”<sup>55</sup> Dwight shrugged his shoulders.<sup>56</sup> During this exchange, Dwight turned his back to Mr. Okeson and transferred an object from his clenched fist into the waist of his pants.<sup>57</sup> When Mr. Glascock arrived on scene, Dwight and Mr. Okeson were standing six to eight feet apart looking at each other.<sup>58</sup>

After some unproductive discussion, Mr. Okeson reached for his radio to call for law enforcement assistance. Dwight insisted that the BLM firefighters should come down to his ranch to work something out instead of getting everyone excited.<sup>59</sup> Mr. Okeson could not contact law enforcement officials via cell phone or radio because of his remote location. Eventually Mr. Okeson and Mr.

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satisfactory conditions and resources are typically not available on the Burns district until late September. *See Tr.* at 801, Lines 9-25; 802, Lines 1-13. In August, BLM fire resources including engines, helicopters, airplanes, and qualified personnel are typically committed to fighting naturally-caused fires. In August of 2006, the fire resources available to Burns BLM were limited. *See Tr.* at 832- 833. As such, the fires that the Hammonds lit interfered with BLM firefighting operations by consuming resources.

<sup>45</sup> *Tr.* at 1080, Lines 2-11 (testimony of Mr. Glascock); 864 (testimony of Mr. Okeson).

<sup>46</sup> *Tr.* at 865 Lines 6-12 (testimony of Mr. Okeson).

<sup>47</sup> *Tr.* at 867.

<sup>48</sup> *Tr.* at 869, Lines 10-25; 870 Lines 1-24.

<sup>49</sup> *Tr.* at 871.

<sup>50</sup> *Tr.* at 871-72.

<sup>51</sup> *Tr.* at 874, Lines 3-9.

<sup>52</sup> *Tr.* at 875-76 .

<sup>53</sup> *Tr.* at 875-76.

<sup>54</sup> *Tr.* at 877.

<sup>55</sup> *Tr.* at 877.

<sup>56</sup> *Tr.* at 878.

<sup>57</sup> *Tr.* at 880, Lines 5-12.

<sup>58</sup> *Tr.* at 1088, Lines 2-4 (testimony of Mr. Glascock).

<sup>59</sup> *Tr.* at 879, Lines 15-20 (testimony of Mr. Okeson); 1088, Lines 23-25; 1089, Lines 1-4 (testimony of Mr. Glascock).

Glascock left Dwight and started walking in the direction of the road where their ATVs were parked.<sup>60</sup>

When Mr. Okeson and Mr. Glascock reached the road they turned around to see a fire advancing at them from the exact spot where they were just talking to Dwight.<sup>61</sup> Just moments before, they were in this area and did not see any fire, smoke, embers, or anything that would indicate an ignition source and the only other person in the area aside from firefighters was Dwight.<sup>62</sup> Mr. Okeson radioed air command to provide aerial coverage through circling above him and Mr. Glascock due to his report that “we have an arsonist lighting us in.”<sup>63</sup> In an attempt to preserve some physical evidence to demonstrate that Dwight was in the area of these suspicious ignitions, Mr. Okeson placed several rocks in a ring around boot prints in the road where he had observed Dwight walking.<sup>64</sup> Joseph Bates, an experienced Air Attack observer flying overhead at this time repeatedly advised Mr. Okeson and Mr. Glascock to vacate the area for safety reasons because flames from the new ignition were rapidly approaching their position.<sup>65</sup> Mr. Bates was concerned because the fire was rapidly growing and it was running up the hill, gaining momentum, and getting bigger.<sup>66</sup> He was concerned that, if there were any trouble getting the ATVs started, Okeson and Glascock would have trouble outrunning the fire.<sup>67</sup>



William Lambert, another Air Attack observer flying overhead at the time, was suspicious of the new ignition that boxed in Mr. Okeson and Mr. Glascock because it was located in the opposite direction from the other spot fires being thrown from the main fire.<sup>68</sup> Mr. Lambert noted that the prevailing wind would carry the fires to the north and accordingly there was “no way that we could have spot fires out to the south.”<sup>69</sup> Mr. Bates observed low to moderate fire activity on the main fire at approximately the same time this new ignition was sighted.<sup>70</sup> Yet, Mr. Bates estimated that the new ignition was about three miles away from the main fire.<sup>71</sup>

Charley Martin, a fire behavior analyst, predicted with the aid of sophisticated computerized modeling that the maximum spotting distance for this main fire would have been approximately 1/4 - 3/5 of a mile.<sup>72</sup> Mr. Martin also stated that

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<sup>60</sup> Tr. at 882.

<sup>61</sup> Tr. at 883, Lines 15-18 (testimony of Mr. Okeson); 1089-90 (testimony of Mr. Glascock).

<sup>62</sup> Tr. at 886, Lines 11-17 (testimony of Mr. Okeson); 1217, Lines 23-24 (testimony of Mr. Glascock).

<sup>63</sup> Tr. at 884.

<sup>64</sup> Tr. at 892, Lines 3-8.

<sup>65</sup> Tr. at 1264.

<sup>66</sup> Tr. at 1264.

<sup>67</sup> Tr. at 1264.

<sup>68</sup> Tr. at 1016.

<sup>69</sup> Tr. at 1016.

<sup>70</sup> Tr. at 1257, Lines 8-19.

<sup>71</sup> Tr. at 1258, Lines 13-19.

<sup>72</sup> Tr. at 1289-1290.

the spot fires on August 23 were suspicious because there were no indications of fire between the main fire and the spots.<sup>73</sup> Typically firefighters experience very random yet progressively distant spotting from the main fire.<sup>74</sup> The fact that the ignitions on August 23 were in a straight line similar to those that Steven admitted to lighting the night before also arose suspicions.<sup>75</sup> Further, the fuel types indicative of this area, such as grasses and other light fuels, are not conducive to holdover fires.<sup>76</sup> (Holdover fires are areas of heat, usually smoldering combustion, that remain after the main body of the fire has passed.)

Mr. Bates later reported that he thought this series of events was suspicious and inconsistent with the natural progression of fire.<sup>77</sup> Mr. Lambert was so disturbed by this observation that he informed Burns Interagency Communication Center when he was back on the ground that day.<sup>78</sup> Likewise, Mr. Okeson told fire investigators in 2006 that he thought Dwight was responsible for lighting the suspicious fires.<sup>79</sup> The initial reaction from the experienced firefighters who observed the new fires on August 23 was to alert law enforcement due to the suspicion of arson. At approximately 11:00 a.m. on August 23, the Burns BLM District Manager called the Harney County Sheriff's Office to relay the arson reports submitted by BLM employees.<sup>80</sup>

The events of August 23 were combined in the indictment as the Grandad Arson (Counts 7 and 8). The jury found Dwight not guilty of criminal charges related to the events of August 23. The jury did not reach a verdict regarding Steven before the criminal case was eventually resolved based on convictions carrying prison sentences for other counts. However, the evidence above demonstrates that one or more affiliates of Hammond Ranches, Inc., including Steven, was responsible for: a) violating BLM grazing regulations and the terms and conditions of Hammond Ranches, Inc.'s, permit by lighting fires on August 23 and b) endangering the lives of Mr. Okeson and Mr. Glascock by lighting a fire that almost boxed them in as well as endangering other firefighters. The fires put firefighters at risk and, accordingly, interfered with the efforts of firefighter(s) to extinguish a fire in violation of 43 C.F.R. § 9212.1.

These August, 2006 fires, as well as other fires, are still the subject of a civil complaint the United States filed in July, 2011 against Hammond Ranches, Inc. and Dwight and Steven Hammond to recover fire suppression costs and resource damages. *United States v. Hammond Ranches et al*, Civ. No. 11-CV-823-SU (D.Or.). This civil action was stayed until the criminal case was resolved. With

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<sup>73</sup> Tr. at 1295, Lines 1-8.

<sup>74</sup> Tr. at 1392, Lines 13-23 (testimony of Gary White, fire investigator).

<sup>75</sup> Tr. at 1497, Lines 18-25 (testimony of John Bird, fire investigator).

<sup>76</sup> Tr. at 1295, Lines 19-25; 1296, Lines 1-3 (testimony of Mr. Martin); 1451, Lines 5-7 (testimony of Mr. White).

<sup>77</sup> Tr. 1261-63.

<sup>78</sup> Tr. at 1017, Lines 1-5.


<sup>79</sup> Tr. at 1427, Lines 4-9.

<sup>80</sup> Tr. at 644, Lines 4-10 (testimony of Sheriff Glerup).



the criminal case resolved, the Court has lifted the stay. Accordingly, it is possible that the Hammonds will be found responsible for additional fires in the civil proceeding.

### 3) August 24, 2006



On August 24, at approximately 8:00 a.m., Mr. Glascock met with Steven at the Frenchglen Hotel to discuss a proposed BLM burnout operation and to check on the status of Dwight who had disappeared into smoke the day before.<sup>81</sup> When Mr. Glascock confronted Steven about Dwight lighting fires, Steven said that if Mr. Glascock was not willing to work with the Hammonds to make the fire investigations go away, then Steven would blame Mr. Glascock for lighting the suspicious fires.<sup>82</sup> Steven told Mr. Glascock “if I go down, you’re going down with me.”<sup>83</sup>

Also on the morning of August 24, while Sheriff Glerup was headed up the Loop Road to respond to the reports of arson called into his office the day before, he happened upon Steven. He stopped Steven, advised him of his rights and placed him under arrest for questioning in connection with the suspicious fires.<sup>84</sup> After realizing that Steven was being followed by a fencing contractor to do some work, the Sheriff let Steven go provided that Steven reported to the Sheriff’s office later that day, which he did.<sup>85</sup> The Sheriff’s questioning resulted in a search warrant.<sup>86</sup> When executing this warrant, law enforcement noticed that the blue Chevy truck that Steven was seen driving on August 23 smelled heavily of smoke.<sup>87</sup>

### 4) Origin and Cause Investigations

Gary White, an experienced wildland fire investigator,<sup>88</sup> was called to the area in August of 2006 to investigate the suspicious fires. Working with a team of experienced wildland fire investigators, Mr. White supervised the investigation reports of ten ignitions. The team concluded that seven of the ten ignitions were intentionally set by humans.<sup>89</sup> These conclusions were based on the totality of the circumstances and took into account as much information as possible.<sup>90</sup> The team considered and ruled out lightning strikes, debris burning, engine exhaust,

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<sup>81</sup> Tr. at 1098-99.

<sup>82</sup> Tr. at 1100, Lines 1-16.

<sup>83</sup> *Id.*

<sup>84</sup> Tr. at 648, Lines 12-20.

<sup>85</sup> Tr. at 648-49.

<sup>86</sup> Tr. at 649.

<sup>87</sup> Tr. at 971, Lines 12-15; 650.

<sup>88</sup> Gary White is a Wildland Fire Origin and Cause Investigator who has worked for various government agencies as a fire investigator since 1975.

<sup>89</sup> Tr. at 1354, Lines 13-19; 1359, Lines 2-8 and 15-18; 1364, Lines 24-25; 1365, Line 1; 1371, Lines 11-19; 1380, Lines 3-15; 1388, Lines 19-21 (testimony of Mr. White); 1527, Lines 20-22 (testimony of Mr. Bird); 1589 (testimony of Carrie Bilbao, fire investigator).

<sup>90</sup> Tr. at 1387-1388 (testimony of Mr. White); 1523, Lines 11-17 (testimony of Mr. Bird).



equipment use, children playing, fireworks, power lines, firefighting operations, spotting, and railroads as possible causes.<sup>91</sup> John Bird, an experienced fire investigator, explained that the indicators near the specific origin area of at least one fire showed that someone with smooth soled boots walked the remote area prior to ignition.<sup>92</sup> Wildland firefighters do not wear smooth soled boots.

## 5) Aftermath of August 2006 Fires

Jeffrey Rose worked as a BLM fire ecologist from October 1999 through May of 2008.<sup>93</sup> He is very experienced with fire's effect on vegetation in the Burns area.<sup>94</sup> At trial, Mr. Rose explained the value of sagebrush as habitat for wildlife such as sage-grouse, mule deer, antelope, and elk.<sup>95</sup> While fire does kill juniper and generate forage for cattle grazing, it also kills sagebrush.<sup>96</sup> Exposed bare mineral soil left after a fire can be covered by nonnative weeds and grasses because these species can gain an earlier start than sagebrush, which often must be reestablished by seed.<sup>97</sup> Replacing existing sagebrush with weeds and grasses increases erosion and decreases habitat for wildlife.<sup>98</sup> Sufficient sagebrush cover is important for sensitive species such as the Greater Sage-Grouse. As these examples demonstrate, prescribed burns must be carefully designed to achieve ecological objectives. Further, the Hammond burning, without regard to BLM's prescribed burning objectives, has foreclosed some of BLM's flexibility for ecological restoration in the area. By unilaterally burning habitat, the Hammonds have removed areas that could have served as habitat while BLM conducted smaller prescribed burns in other areas. The BLM carefully considers the balance of available habitat on a large scale before undertaking a prescribed burn.

Due to the fires of August 2006, many people in the area suffered economic loss. William Otley, a beef rancher in the area, had to reseed his private land at his own expense.<sup>99</sup> The BLM undertook similar efforts to preserve the integrity of the natural landscape, provide habitat for native wildlife, and prevent encroachment of weeds.<sup>100</sup> The mix of seeds that BLM used to complete these operations did not include sagebrush seeds because they are expensive and have a low success rate.<sup>101</sup>

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<sup>91</sup> *Tr.* at 1356, Lines 20-25; 1381, Lines 9-13; 1384, Lines 4-22; 1385, Lines 1-5; 1412, Lines 2-7; 1446, Lines 1-10; 1447, Lines 12-15; 1450-51; 1463, Lines 5-12 (testimony of Mr. White); 1491, Lines 16-23; 1492, Lines 13-18; 1527, Lines 11-15 (testimony of Mr. Bird); 1590, Lines 14-15; 1591, Lines 1-8 (testimony of Ms. Bilbao).

<sup>92</sup> *Tr.* at 1518, Lines 16-24.

<sup>93</sup> *Tr.* at 1665, Lines 6-8.

<sup>94</sup> *Tr.* at 1666-68.

<sup>95</sup> *Tr.* at 1667-68.

<sup>96</sup> *Tr.* at 1668.

<sup>97</sup> *Tr.* at 1668, Lines 15-20.

<sup>98</sup> *Tr.* at 1669, Lines 5-11.

<sup>99</sup> *Tr.* at 1233-34.

<sup>100</sup> *Tr.* at 1673, Lines 15-22.

<sup>101</sup> *Tr.* at 1683, Lines 4-8.

## RESOLUTION OF PROTEST

The Burns District BLM received a protest of its January 8, 2014 Proposed Decision from Hammond Ranches, Inc. dated January 24, 2014. The protest was received timely. The protest did not offer specific, substantive points for BLM to consider.

The protest suggests there was delay in BLM's responding on January 8, 2014 to the Application for Grazing Permit Renewal signed by Susan Hammond on September 30, 2013. In fact, BLM has been in regular correspondence with Hammond Ranches, Inc. to address their upcoming permit renewal. The BLM wrote to Hammond Ranches, Inc. on April 5, 2013 noting the grazing permit would expire in February, 2014, and BLM advised that, "[i]n light of the criminal convictions under 18 U.S.C. § 844(f)(1) and Hammond actions described in the evidence presented in the criminal proceedings, the BLM may determine the grazing permit cannot be renewed due to an unsatisfactory record of performance. Accordingly, BLM advises that Hammond Ranches, Inc. should be considering alternative arrangements for its livestock if the permit is not renewed." The BLM again wrote to Hammond Ranches, Inc. on September 18, 2013, concerning the renewal application process and again advised of the potential the permit would not be renewed.


Rather than offering any specific information, the protest states that Hammond Ranches, Inc. does not share BLM's assessment of the sworn testimony at the criminal trial. Hammond Ranches, Inc. did not specifically offer countervailing information concerning any particular point summarized from the criminal transcript. Dwight and Steven Hammond had the opportunity to present evidence at the criminal trial but this presentation of evidence did not rebut the findings above and, even in light of the Hammond evidence, the jury reached the guilty verdicts described in this Final Decision. In fact, on February 7, 2014, the United States Court of Appeals for the Ninth Circuit in *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, Nos. 12-30337, 12-30339 (9<sup>th</sup> Cir. 2014), held that the trial court was bound to sentence the Hammonds to five-year terms of imprisonment. The Ninth Circuit Court emphasized the risk to human life and damage to property caused by the Hammonds. Hammond Ranches, Inc. did not specifically identify errors in the application of law or regulation in the Proposed Decision. The protest concludes vaguely that "there is a lot more to it" and Hammond Ranches, Inc. has a satisfactory record of performance. Hammond Ranches, Inc. did not dispute the fact of the convictions cited in the Proposed Decision.

My staff and I have thoroughly reviewed this protest and determined it did not introduce any new, relevant information or challenge any of the facts stated in the Proposed Decision nor has any other information arisen that warrants changing the Decision. Therefore, I have issued this Final Decision which adopts the Proposed Decision.


## CONCLUSION

I find that Hammond Ranches, Inc. and its affiliates have demonstrated an unacceptable record of performance. During the present permit period, Dwight and Steven were found guilty in a criminal legal proceeding of multiple instances of unauthorized burning over a period of time. The intentional and malicious fire-setting by principals of Hammond Ranches, Inc. in the 2001 Hardie-Hammond Arson and August 22, 2006 Krumbo Butte Arson violated regulations applicable to the Hammond Ranches, Inc.'s grazing permit and violated the permit terms.



The Hammond fire-setting maliciously and knowingly placed public recreationists, firefighters, and BLM range staff at high risk just to further Hammond Ranches, Inc.'s grazing interests. Anytime firefighters attack a fire they are at risk. Last summer included a number of tragic firefighting incidents, including the deaths of 19 firefighters on the Yarnell Hill fire in Arizona. Wildland firefighters cannot avoid risk, but are trained to mitigate risk. Intentionally ignited fires that are started without communication to firefighters, a burn plan, black-lining around the perimeter, secondary containment lines, or safety zones pose unnecessary risks to firefighters that are extremely difficult to mitigate. The Hammonds' behavior violated 43 C.F.R. § 9212.1 due to Hammonds' interference with firefighting efforts.



The fire-setting burned, destroyed, and removed vegetation on public lands without authorization and damaged U.S. property without authorization in violation of 43 C.F.R. § 4140.1. The Hammonds set the fires because they disagreed with how BLM managed the land. The Hammonds acted in the interest of improving the rangeland forage for their cattle, but not necessarily for other resources like wildlife habitat. Hammond Ranches, Inc.'s cattle grazed public land by virtue of the grazing permit. With non-renewal of this permit, the Hammonds will no longer have the same economic incentive to burn public land allotments without authorization and endanger people.



The Hammonds' behavior underlying the 2006 Krumbo Butte arson conviction — standing alone — constitutes an unsatisfactory record of performance. The Hammonds' conduct underlying this conviction is entirely inconsistent with orderly use, improvement, and development of public land resources under the Taylor Grazing Act, 43 U.S.C. § 315a, and FLPMA. The Hammonds' malicious disregard for human life and public property shows contempt for BLM regulation of public land. The Hammonds' interference with firefighting efforts is antithetical to orderly use of resources. The Hammonds' disregard for orderly and planned prescribed burning that accounts for ecological objectives and human safety is incompatible with the orderly use and improvement of resources. The BLM carefully plans and conducts prescribed burns to meet ecological objectives, such as retaining sagebrush and bitterbrush habitat. By taking matters into their own hands and burning public lands outside of the official BLM process, the Hammonds altered the Burns District's prescribed fire management strategy for years to come. Good stewardship is more than just producing grass for livestock — it requires orderly conduct that protects the multiple objectives of public lands and the lives of those who work and recreate on public lands.



Even if, for argument's sake only, the Hammonds' behavior underlying the 2006 Krumbo Butte arson conviction — standing alone — was not sufficient to constitute an unsatisfactory record of performance, the Hammonds' behavior, when one considers both the 2006 conviction and 2001

convictions, also constitutes an unsatisfactory record of performance. The fact that the 2006 arson followed the 2001 arson demonstrates a pattern of Hammonds' conduct violating regulations applicable to the grazing permit and inconsistent with the orderly use, improvement, and development of resources. The 2006 arson was not an isolated incident. Rather, it was part of a pattern of conduct by Hammond Ranches, Inc.'s owners and operators attempting to improve livestock forage at the risk of human life and multiple use resources.<sup>102</sup>

Even if, for argument's sake only, the 2006 arson conviction alone, or the 2006 and 2001 arson convictions combined, were not sufficient to find an unsatisfactory record of performance, the additional fire-setting described in the criminal trial above further demonstrates an unsatisfactory record of performance. While the jury did not reach a verdict on some counts, the testimony shows a pattern of intentional fire-setting by Dwight and Steven Hammond — beyond the fires for which they were convicted — demonstrating their callous disregard for human life and BLM multiple use objectives for the land. This further demonstrates a pattern of Hammonds' conduct violating regulations applicable to the grazing permit and inconsistent with the orderly use, improvement, and development of resources. Additionally, while the jury acquitted Dwight or Steven Hammond on some counts, the criminal standard of proof is higher than the civil standard and evidence may yet show that the Hammonds lit other fires at issue in the civil trespass case. A finding of liability for the charges on which Dwight or Steven Hammond were acquitted is not essential for this current Final Grazing Decision because, for the reasons stated above, the Hammonds' record of performance is already entirely unsatisfactory based on the convictions alone.

Grazing permits are privileges that are conditioned on a permittee's commitment to abide by applicable regulations. Hammond Ranches, Inc., through its controlling owners and principals, has not abided by the regulations and, in fact, has engaged in substantial deviation from applicable regulations through criminal conduct. Denial of the Application for Grazing Permit Renewal for grazing privileges on BLM lands within the Burns District is warranted. Because Hammond Ranches, Inc. has not met the requirements for renewal of permitted use, Hammond Ranches, Inc. can no longer stand in first priority to receive permitted use. The grazing preference associated with this permit will no longer be effective and Hammond Ranches, Inc. will no longer hold a superior or priority position against others for the purpose of receiving a grazing permit for these allotments.

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<sup>102</sup> On March 9, 2000, Steven Hammond was also convicted under 43 C.F.R. § 4140.1(b)(7) for interfering with lawful use of public lands for interfering with a hunting guide on public lands. *U.S. v. Hammond*, Case 00-M-2030. This is yet another instance in a pattern of Hammond disregard for orderly use of public lands.

## AUTHORITY

BLM grazing regulations at 43 C.F.R. § 4110.1(b) provide:

Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) Renewal of permit or lease. (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

The regulations prohibit “(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization” and “(4) Damaging or removing U.S. property without authorization.” 43 C.F.R. § 4140.1. Under 43 C.F.R. § 4130.2(e), “[p]ermitees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if ... [t]he permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease” and other conditions are met. 43 C.F.R. § 9212.1, cited in detail above, prohibits causing fires and interfering with firefighting efforts. The FLPMA, 43 U.S.C. § 1752, and Taylor Grazing Act, 43 U.S.C. §§ 315a-315b, require that an applicant for permit renewal be in compliance with the terms and conditions of the permit and pertinent rules and regulations. FLPMA, 43 U.S.C. § 1752(c), provides that, for a permittee holding an expiring grazing permit to be given first priority for receipt of a new permit, the permittee must be “in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit.” Other pertinent authorities are cited throughout this Final Decision.

## RIGHT OF APPEAL

Any applicant, permittee, lessee or other person whose interest is adversely affected by the Final Decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the Final Decision. The appeal may be accompanied by a petition for a stay of the Decision in accordance with 43 CFR 4.471, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the Authorized Officer, Burns District Manager, 28910 Hwy 20 West, Hines, Oregon 97738. *A notice of appeal and/or request for stay electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal and/or request for stay must be on paper.*

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the Final Decision is in error and otherwise complies with the provisions of 43 CFR 4.470. The appellant must serve a copy of the appeal by certified mail on the Office of the Solicitor, U.S. Department of the Interior, 805 SW Broadway, Suite 600, Portland, Oregon 97205, and person(s) named [43 CFR 4.421(h)] in the Copies sent to: section of this Decision.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:



- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the Decision that receives a copy of a petition for a stay and/or an appeal see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

Sincerely,



Brendan Cain  
District Manager

Cc: **CERTIFIED MAIL – 7010 1870 0002 7993 1474**  
Judge Steven E. Grasty  
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## Attachment 1

### Summary of Counts

Count	Description	Person(s) Charged	Jury Verdict
1	Conspiracy. By means of fire intentionally and maliciously damage property owned by the U.S. and therefore risked injury to BLM firefighters. From September 9, 1999 to August 24, 2006.	Dwight and Steven	No Verdict Rendered
2	<b><i>2001 Hardie-Hammond Arson. Use of fire to damage and destroy property of the U.S.</i></b>	<b><i>Dwight and Steven</i></b>	<b><i>Both Guilty</i></b>
3	August 22, 2006 Lower Bridge Creek Arson. Use of fire to damage and destroy property of the U.S.	Dwight and Steven	Both Not Guilty
4	August 22, 2006 Lower Bridge Creek Arson. Using fire to cause more than \$1,000 of damage and depredation against property of the U.S.	Dwight and Steven	Both Not Guilty
5	<b><i>August 22, 2006 Krumbo Butte Arson. Use of fire to damage and destroy property of the U.S.</i></b>	<b><i>Steven</i></b>	<b><i>Guilty</i></b>
6	August 22, 2006 Krumbo Butte Arson. Use of fire to cause more than \$1,000 of damage and depredation against property of the U.S.	Steven	Not Guilty
7	August 23, 2006 Grandad Arson. Use of fire to damage and destroy property of the U.S. and creating a substantial risk of injury to any person.	Dwight and Steven	Dwight was found Not Guilty. No Verdict Rendered Regarding Steven.
8	August 23, 2006 Grandad Arson. Use of fire to cause more than \$1,000 of damage and depredation against property of the U.S.	Dwight and Steven	Dwight was found Not Guilty. No Verdict Rendered Regarding Steven.
9	August 24, 2006 tampering with a witness.	Steven	Excluded from verdict sheet

RKARGES:md 02/12/14:ANDREWS